



The Federal Election Commission
Washington, DC 20463

AUG 12 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Glenn Hamer, Executive Director
Arizona Republican Party
3501 North 24th Street
Phoenix, AZ 85016

RE: MUR 5785
Pederson 2006 and Jeff Marella,
in his official capacity as treasurer
James E. Pederson

Dear Mr. Hamer:

This is in reference to the complaint you filed with the Federal Election Commission on August 2, 2006 concerning Pederson 2006 and Jeff Marella, in his official capacity as treasurer (the "Committee") and James E. Pederson (collectively, "Respondents"). Based on that complaint and in the course of carrying out its supervisory responsibilities, on March 6, 2007 the Commission found that there was reason to believe that Respondents violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv), and that the Committee violated 11 C.F.R. §§ 400.21(a) and 400.22(a). The Factual and Legal Analyses explaining the bases for the Commission's decisions on March 6, 2007 are enclosed.

However, on June 26, 2008, the Supreme Court issued its decision in *Davis v. FEC*, 128 S. Ct. 2759 (2008) and found Sections 319(a) and 319(b) of the Bipartisan Campaign Reform Act of 2002 — the so-called "Millionaires' Amendment" (the "Amendment") — unconstitutional because they violate the First Amendment to the U.S. Constitution. The Court's analysis in *Davis* precludes enforcement of the reporting requirements of the Amendment. Therefore, after considering the circumstances of this matter, the Commission determined on July 29, 2008 to take no further action as to the Committee and Mr. Pederson, and closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

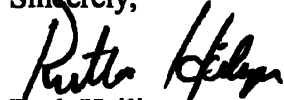
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MUR 5785 (Pederson 2006, *et. al.*)
Glenn Hamer, Executive Director
Arizona Republican Party
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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1598.

Sincerely,


Ruth Heilizer
Attorney

Enclosures:

Factual and Legal Analysis for Pederson 2006 and Carter Olson, in his
official capacity as treasurer
Factual and Legal Analysis for James E. Pederson

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Pederson 2006 and Carter Olson, **MUR: 5785**
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by Glenn Hamer, and by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its responsibilities. The complaint alleges that Pederson 2006 and Carter Olson, in his official capacity as treasurer (the "Committee" or "Respondents"), the campaign committee of Arizona senatorial candidate James E. Pederson ("Pederson"), filed their initial 24-Hour Notice of Expenditures of Personal Funds ("Form 10") with the Commission and the Secretary of the Senate six days late, and filed a subsequent Form 10, disclosing \$275,000 in expenditures by Pederson, three days late. In addition, the complaint asserts that Respondents failed to timely file three additional Form 10s with the Secretary of the Senate, although it acknowledges that these Form 10s were filed timely with the Commission.¹

Based on the reasons outlined below, the Commission found reason to believe that Pederson 2006, and Carter Olson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) and 11 C.F.R. §§ 400.21(a) and 400.22(a), in connection with the two Form 10s filed untimely with the Commission and the Secretary of the Senate, and also

¹ The cover letter to the complaint refers to, and attaches, a news article published on *The Arizona Republic's* website, www.az.com, reporting that Respondents did not use "best efforts" when it failed to initially identify the occupations of the candidate's spouse and his campaign manager in connection with their contributions. The cover letter "notes[s]" the article, stating that it is "another issue we hope the FEC will take under consideration," but does not reference it in the complaint itself. As Respondents have amended their reports to provide the proper information concerning these two contributors, the Commission does not believe this matter warrants additional consideration.

found no reason to believe Respondents violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a) with respect to the three other Form 10s.

II. FACTUAL AND LEGAL ANALYSIS

A. Reporting of Personal Funds Expenditures to Both the Commission and the Secretary of the Senate

1. Facts

Pederson exceeded the \$648,720 threshold for Arizona senatorial candidates on March 31, 2006, when he contributed \$2,000,000 to the Committee, triggering the obligation to notify the Commission and the Secretary of the Senate on Form 10s within 24 hours of the expenditure, and again triggered the notification obligation with a subsequent candidate expenditure of \$275,000 on June 30, 2006.² However, the initial Form 10, disclosing \$2,000,000 in expenditures from Pederson's personal funds, was filed six days late, and a subsequent Form 10, disclosing \$275,000 in expenditures by Pederson, was filed three days late. In connection with the initial late filing, the Commission's Reports Analysis Division sent the Committee a Request for Additional Information ("RFAI") dated September 19, 2006, noting that the Form 10 appeared to have been filed untimely.

In response to the complaint, Respondents concede these filings were untimely, and explain their initial late notification as stemming from a misunderstanding of the Millionaires' Amendment's requirements. They read Form 10—which is headed "24 Hour Notice of Expenditure From Candidate's Personal Funds"—to mean that their notification obligation was not triggered until 24 hours after the Committee expended more than \$648,720 of the candidate's funds, rather than 24 hours after the candidate expended personal funds by giving it to the

² Pederson was unopposed in the primary.

Committee. *See* Exhibit B to the Response (Affidavit of Pederson Committee Compliance Officer Darryl Tattrie); *see also* Committee's identical October 11 and 16, 2006 Responses to RFAI, referencing the initial late notification and maintaining that it "makes every effort to file reports in a timely manner and ha[s] implemented procedures to ensure timely filing in the future." As for the second late filing, Respondents assert that both the Committee's treasurer and assistant treasurer were traveling on June 30, 2006 for the July 4, 2006 weekend and could not be reached in time to avoid a late filing. *See* Exhibit B to the Response, *supra*.

2. Analysis

Senate candidate or his or her principal campaign committee must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes expenditure from personal funds exceeding two times the threshold amount.³ 2 U.S.C. § 434(a)(6)(B)(iii); 11 C.F.R. § 400.21(a). This notification must be received within 24 hours of the time such expenditure is made. *Id.* For additional expenditures aggregating more than \$10,000, the candidate or his or her principal campaign committee is required to notify the Secretary of the Senate, the Commission and each opposing candidate in a Form 10 filing within 24 hours of the time such expenditure is made. *See* 2 U.S.C. § 434(a)(6)(B)(iv); 11 C.F.R. § 400.22(a).

In response to the complaint, Respondents concede that they failed to timely file the initial notification of Pederson's \$2,000,000 expenditure and subsequently failed to timely file

³ The threshold amount for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population ("VAP") of the state multiplied by 4 cents. *See* 11 C.F.R. § 400.9. In the case of Arizona in 2006, the threshold amount was \$324,360 (\$150,000 + (4,359,000 VAP x .04, or \$174,360). Thus, an amount that is two times the threshold amount is \$648,720 (\$324,360 x 2).

Because the Form 10s pertained to the primary election, in which Pederson was unopposed, notification of opposing candidates is not an issue in this matter.

the notification of his \$275,000 personal expenditure. That they misunderstood the legal requirements or failed to ensure the Form 10s were timely signed does not negate the violations.

Therefore, there is reason to believe that Pederson 2006 and Carter Olson, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv), and 11 C.F.R. §§ 400.21(a) and 400.22(a) in connection with the untimely filings of Form 10s with the Commission and the Secretary of the Senate for candidate expenditures made on March 31, 2006 and June 30, 2006.

B. Reporting of Personal Funds Expenditures to the Secretary of the Senate

1. Facts

The complaint also alleges that Respondents failed to file timely three additional Form 10s with the Secretary of the Senate, even though it acknowledges these forms were timely filed with the Commission. The forms disclosed expenditures by Pederson amounting to \$1,200,000 on May 8, 2006, \$250,000 on June 14, 2006, and \$459,098 on July 20, 2006. Date and time stamps affixed by the Secretary of the Senate's office indicate that office received the filings several days late. Respondents claim they timely filed these Form 10s with the Secretary of the Senate because they sent them by overnight mail, and produced the supporting shipping receipts.⁴

2. Analysis

Section 100.19(g) provides that Form 10s are considered timely filed if they are received by each of the "appropriate parties," as identified in 11 C.F.R. §§ 400.21 and 400.22, by facsimile or electronic mail ("e-mail") within 24 hours of the time the expenditures triggering the

⁴ According to Respondents, the Instructions for FEC Form 10 require that such forms should be delivered to the Secretary by hand or mail, and if sent, are timely as long as they are postmarked by the due date. They acknowledge that pursuant to 11 C.F.R. § 100.19, such forms are considered timely if those parties required to receive them electronically do so within 24 hours, but wrongly construe such parties to exclude the Secretary of the Senate. See discussion *infra*.

notification obligations are made. The applicable regulations at sections 400.21 and 400.22, in turn, identify the Secretary of the Senate, as well as the Commission and each opposing candidate, as the "appropriate parties" referenced in 11 C.F.R. § 100.19(g). Thus, a Senate candidate's Form 10 is timely filed only if received by both the Commission and the Secretary of the Senate within 24 hours.

The Instructions for Form 10 provide only a physical address and a P.O. box for the Secretary of the Senate, not a facsimile number or an e-mail address. However, because all outside mail is first physically received off-site for irradiation, a process that can take several days, even when the Senate's contractor timely receives mailings, the Secretary of the Senate's time-stamps will not reflect their receipt within 24 hours,

Therefore, the Commission finds no reason to believe that Respondents violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a) with respect to these three Form 10s.⁵

⁵ Complainant also maintained that there may be an issue whether the July 20, 2006 Pederson expenditure might have been made earlier than that date, based on a news report about a Pederson advertising campaign starting on July 21, 2006 that was purportedly funded by Pederson's expenditure. As this purported issue is purely speculative and Respondents have confirmed that the expenditure was made on July 20, 2006, as reported, the Commission does not believe that it warrants any further attention.

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3 **FEDERAL ELECTION COMMISSION**

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5 **FACTUAL AND LEGAL ANALYSIS**

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8 **RESPONDENT:**

James E. Pederson

MUR: 5785

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11 **I. INTRODUCTION**

12 This matter was generated by a complaint filed by Glenn Hamer, and by the Federal
13 Election Commission ("Commission") pursuant to information ascertained in the normal
14 course of carrying out its responsibilities. The complaint alleges that Arizona senatorial
15 candidate James E. Pederson ("Pederson") and Pederson 2006 and Carter Olson, in his official
16 capacity as treasurer (the "Committee"), filed their initial 24-Hour Notice of Expenditures of
17 Personal Funds ("Form 10") with the Commission and the Secretary of the Senate six days
18 late, and filed a subsequent Form 10, disclosing \$275,000 in expenditures by Pederson, three
19 days late. In addition, the complaint asserts that Pederson failed to timely file three additional
20 Form 10s with the Secretary of the Senate, although it acknowledges that these Form 10s
21 were filed timely with the Commission.

22 Based on the reasons outlined below, the Commission found reason to believe that
23 James E. Pederson violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) in connection with the two
24 Form 10s filed untimely with the Commission and the Secretary of the Senate, and also found
25 no reason to believe that Pederson violated 2 U.S.C. § 434(a)(6)(B)(iv) with respect to the
26 three other Form 10s.

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28 **II. FACTUAL AND LEGAL ANALYSIS**

29 **A. Reporting of Personal Funds Expenditures to Both the Commission**
30 **and the Secretary of the Senate**

31

32 **1. Facts**

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34 31, 2006, when he contributed \$2,000,000 to the Committee, triggering the obligation to
35 notify the Commission and the Secretary of the Senate on Form 10s within 24 hours of the
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45 the Millionaires' Amendment's requirements. They read Form 10—which is headed "24
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47 notification obligation was not triggered until 24 hours after the Committee expended more
48 than \$648,720 of Pederson's funds, rather than 24 hours after the candidate expended personal
49 funds by giving it to the Committee. *See Exhibit B to the Response (Affidavit of Pederson*
50 *Committee Compliance Officer Darryl Tattrie); see also Committee's identical October*

¹ Pederson was unopposed during his primary election.

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11 and 16, 2006 Responses to RFAI, referencing the initial late notification and maintaining that it “makes every effort to file reports in a timely manner and ha[s] implemented procedures to ensure timely filing in the future.” As for the second late filing, Pederson and the Committee assert that both the Committee’s treasurer and assistant treasurer were traveling on June 30, 2006 for the July 4, 2006 weekend and could not be reached in time to avoid a late filing. *See* Exhibit B to the Response, *supra*.

2. Analysis

A Senate candidate or his or her principal campaign committee must notify the Commission, the Secretary of the Senate, and each opposing candidate when the candidate makes an expenditure from personal funds exceeding two times the threshold amount.² 2 U.S.C. §§ 434(a)(6)(B)(iii) and (v); 11 C.F.R. §§ 400.21(a) and 400.24. This notification must be received within 24 hours of the time such expenditure is made, *see* 2 U.S.C. § 434(a)(6)(B)(iii); *see also* 11 C.F.R. § 400.21(a), and notifications will be considered timely filed if received by each of the appropriate parties within that time period. 11 C.F.R. § 100.19(g). For each additional expenditure aggregating more than \$10,000, the candidate or his or her principal campaign committee is required to notify the Secretary of the Senate, the Commission and each opposing candidate in a Form 10 filing within 24 hours of the time such expenditure is made. *See* 2 U.S.C. § 434(a)(6)(B)(iv); *see also* 11 C.F.R. § 400.22(a). Although the committee treasurer signs a Form 10, the candidate is responsible for ensuring that it is filed in a timely manner. *See* 11 C.F.R. § 400.25.

² The threshold amount for United States Senate candidates is the sum of \$150,000 plus an amount equal to the voting age population (“VAP”) of the state multiplied by 4 cents. *See* 11 C.F.R. § 400.9. In the case of Arizona in 2006, the threshold amount was \$324,360 (\$150,000 + (4,359,000 VAP x .04, or \$174,360). Thus, an amount that is two times the threshold amount is \$648,720 (\$324,360 x 2).

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80 **B. Reporting of Personal Funds Expenditures to the Secretary**
81 **of the Senate**
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102 mailings, the Secretary of the Senate's time-stamps will not reflect their receipt within 24
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